

63G-4-101. Title.

This chapter is known as the "Administrative Procedures Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-102. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;

(h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of

Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Title 63G, Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section 73-2-25;

(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities pursuant to a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1); and

(u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action.

(3) This chapter does not affect a legal remedy otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.

(10) Notwithstanding any other provision of this section, this chapter does not apply to a permit review adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.

Amended by Chapter 333, 2012 General Session

63G-4-103. Definitions.

(1) As used in this chapter:

(a) "Adjudicative proceeding" means an agency action or proceeding described in Section 63G-4-102.

(b) "Agency" means a board, commission, department, division, officer, council, office, committee, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of

the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

(c) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

(d) "Declaratory proceeding" means a proceeding authorized and governed by Section 63G-4-503.

(e) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

(f) "Party" means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

(g) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

(h) (i) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding.

(ii) If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(i) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

(j) "Superior agency" means an agency required or authorized by law to review the orders of another agency.

(2) This section does not prohibit an agency from designating by rule the names or titles of the agency head or the presiding officers with responsibility for adjudicative proceedings before the agency.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-104. Bases for certain recommendations and decisions limited.

(1) Except as provided in Subsection (2), no agency may recommend or rule on the custody, placement, including foster placement, or other disposition alternative for a minor, or the termination of parental rights, based on the fact that a parent or guardian of the minor lawfully does one or more of the following:

(a) legally possesses or uses a firearm or other weapon;

(b) espouses particular religious beliefs; or

(c) schools the minor or other minors outside the public education system or is otherwise sympathetic to schooling a minor outside the public education system.

(2) Subsection (1) does not prohibit a recommendation or ruling based on the compatibility of a minor with a particular custody, placement, or other disposition alternative as determined by the presence of any of the factors in Subsections (1)(a)

through (1)(c).

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-105. Transition procedures.

(1) The procedures for agency action, agency review, and judicial review contained in this chapter are applicable to all agency adjudicative proceedings commenced by or before an agency on or after January 1, 1988.

(2) Statutes and rules governing agency action, agency review, and judicial review that are in effect on December 31, 1987, govern all agency adjudicative proceedings commenced by or before an agency on or before December 31, 1987, even if those proceedings are still pending before an agency or a court on January 1, 1988.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-201. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63G-4-502, all adjudicative proceedings shall be commenced by either:

- (a) a notice of agency action, if proceedings are commenced by the agency; or
- (b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63G-4-202 and 63G-4-203, or formally according to the provisions of Sections 63G-4-204 through 63G-4-209;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party

within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;

(ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(x) the name, title, mailing address, and telephone number of the presiding officer; and

(xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) When adjudicative proceedings are commenced by the agency, the agency shall:

(i) mail the notice of agency action to each party;

(ii) publish the notice of agency action, if required by statute; and

(iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.

(3) (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by that person's representative, and shall include:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date that the request for agency action was mailed;

(iv) a statement of the legal authority and jurisdiction under which agency action is requested;

(v) a statement of the relief or action sought from the agency; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(b) The person requesting agency action shall file the request with the agency and shall mail a copy to each person known to have a direct interest in the requested agency action.

(c) An agency may, by rule, prescribe one or more forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action.

(d) The presiding officer shall promptly review a request for agency action and shall:

(i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;

(ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or

(iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.

(e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63G-4-203(1)(i) in addition to disclosure required by Subsection (3)(d)(ii).

(ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute.

(iii) The notice required by Subsection (3)(d)(iii) shall:

(A) give the agency's file number or other reference number;

(B) give the name of the proceeding;

(C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63G-4-202 and 63G-4-203, with citation to the applicable rule authorizing that designation, or formally according to Sections 63G-4-204 through 63G-4-209;

(D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;

(E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;

(F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and

(G) give the name, title, mailing address, and telephone number of the presiding officer.

(4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.

(6) Unless the agency provides otherwise by rule or order, an application for a package agency, license, permit, or certificate of approval filed under authority of Title 32B, Alcoholic Beverage Control Act, is not considered to be a request for agency action under this chapter.

(7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

Amended by Chapter 276, 2010 General Session

63G-4-202. Designation of adjudicative proceedings as informal -- Standards -- Undesignated proceedings formal.

(1) The agency may, by rule, designate categories of adjudicative proceedings

to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if:

- (a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter;
- (b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures;
- (c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations; and
- (d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

(2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter.

(3) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

- (a) conversion of the proceeding is in the public interest; and
- (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-203. Procedures for informal adjudicative proceedings.

(1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:

(a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.

(b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.

(c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.

(d) Hearings will be held only after timely notice to all parties.

(e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

(h) All hearings shall be open to all parties.

(i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

- (i) the decision;
 - (ii) the reasons for the decision;
 - (iii) a notice of any right of administrative or judicial review available to the parties; and
 - (iv) the time limits for filing an appeal or requesting a review.
- (j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.
- (k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.
- (2) (a) The agency may record any hearing.
- (b) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.
- (3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-204. Procedures for formal adjudicative proceedings -- Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63G-4-201(5), the respondent, if any, shall file and serve a written response signed by the respondent or the respondent's representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63G-4-201(3)(d), which shall include:

- (a) the agency's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief that the respondent seeks;
- (d) a statement of the facts; and
- (e) a statement summarizing the reasons that the relief requested should be granted.

(2) The respondent shall send a copy of the response filed under Subsection (1) to each party.

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All documents permitted or required to be filed shall be filed with the agency and one copy shall be sent to each party.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-205. Procedures for formal adjudicative proceedings -- Discovery and subpoenas.

(1) In formal adjudicative proceedings, the agency may, by rule, prescribe

means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.

(2) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on the presiding officer's own motion.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-206. Procedures for formal adjudicative proceedings -- Hearing procedure.

(1) Except as provided in Subsections 63G-4-201(3)(d)(i) and (ii), in all formal adjudicative proceedings, a hearing shall be conducted as follows:

(a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

(b) On the presiding officer's own motion or upon objection by a party, the presiding officer:

- (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
- (ii) shall exclude evidence privileged in the courts of Utah;
- (iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document; and
- (iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.

(c) The presiding officer may not exclude evidence solely because it is hearsay.

(d) The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(e) The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(g) The hearing shall be recorded at the agency's expense.

(h) Any party, at the party's own expense, may have a person approved by the agency prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing.

(i) All hearings shall be open to all parties.

(2) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-207. Procedures for formal adjudicative proceedings -- Intervention.

(1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

- (a) the agency's file number or other reference number;
- (b) the name of the proceeding;
- (c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and
- (d) a statement of the relief that the petitioner seeks from the agency.

(2) The presiding officer shall grant a petition for intervention if the presiding officer determines that:

- (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and
- (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(3) (a) Any order granting or denying a petition to intervene shall be in writing and mailed to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) The presiding officer may impose the conditions at any time after the intervention.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-208. Procedures for formal adjudicative proceedings -- Orders.

In formal adjudicative proceedings:

(1) Within a reasonable time after the hearing, or after the filing of any posthearing documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:

- (a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;
- (b) a statement of the presiding officer's conclusions of law;
- (c) a statement of the reasons for the presiding officer's decision;
- (d) a statement of any relief ordered by the agency;
- (e) a notice of the right to apply for reconsideration;
- (f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and
- (g) the time limits applicable to any reconsideration or review.

(2) The presiding officer may use the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

(3) A finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

(4) This section does not preclude the presiding officer from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-209. Default.

(1) The presiding officer may enter an order of default against a party if:

(a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding;

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63G-4-204.

(2) An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

(3) (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default and any subsequent order shall be made to the presiding officer.

(c) A defaulted party may seek agency review under Section 63G-4-301, or reconsideration under Section 63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

(4) (a) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding begun by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

(b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-301. Agency review -- Procedure.

(1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the

aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.

(b) The request shall:

- (i) be signed by the party seeking review;
- (ii) state the grounds for review and the relief requested;
- (iii) state the date upon which it was mailed; and
- (iv) be mailed to the presiding officer and to each party.

(2) (a) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response.

(b) The party who files a response under Subsection (2)(a) shall mail a copy of the response to each of the parties and to the presiding officer.

(3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules.

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other documents, or to conduct oral argument.

(5) Notice of hearings on review shall be mailed to all parties.

(6) (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.

(c) The order on review shall contain:

- (i) a designation of the statute or rule permitting or requiring review;
- (ii) a statement of the issues reviewed;
- (iii) findings of fact as to each of the issues reviewed;
- (iv) conclusions of law as to each of the issues reviewed;
- (v) the reasons for the disposition;
- (vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- (vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and
- (viii) the time limits applicable to any appeal or review.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-302. Agency review -- Reconsideration.

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a

prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-401. Judicial review -- Exhaustion of administrative remedies.

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that:

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

(i) the administrative remedies are inadequate; or

(ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3) (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63G-4-302(3)(b).

(b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-402. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-1106; and

(iii) substantiated findings of abuse or neglect made by the Division of Child and Family Services, after an evidentiary hearing.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains the petitioner's principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall

be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
 - (ii) the name and mailing address of the respondent agency;
 - (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;
 - (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
 - (v) a copy of the written agency order from the informal proceeding;
 - (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
 - (vii) a request for relief, specifying the type and extent of relief requested; and
 - (viii) a statement of the reasons why the petitioner is entitled to relief.
- (b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (3) (a) The court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.
- (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Amended by Chapter 208, 2011 General Session

63G-4-403. Judicial review -- Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

- (b) the agency has acted beyond the jurisdiction conferred by any statute;
- (c) the agency has not decided all of the issues requiring resolution;
- (d) the agency has erroneously interpreted or applied the law;
- (e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
- (f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;
- (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;
- (h) the agency action is:
 - (i) an abuse of the discretion delegated to the agency by statute;
 - (ii) contrary to a rule of the agency;
 - (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or
 - (iv) otherwise arbitrary or capricious.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-404. Judicial review -- Type of relief.

(1) (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute.

- (b) In granting relief, the court may:
- (i) order agency action required by law;
 - (ii) order the agency to exercise its discretion as required by law;
 - (iii) set aside or modify agency action;
 - (iv) enjoin or stay the effective date of agency action; or
 - (v) remand the matter to the agency for further proceedings.

(2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-405. Judicial review -- Stay and other temporary remedies pending final disposition.

(1) Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules.

(2) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

(3) If the agency denies a stay or denies other temporary remedies requested by a party, the agency's order of denial shall be mailed to all parties and shall specify

the reasons why the stay or other temporary remedy was not granted.

(4) If the agency has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

- (a) the agency violated its own rules in denying the stay; or
- (b) (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;
- (ii) the party seeking judicial review will suffer irreparable injury without immediate relief;
- (iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings; and
- (iv) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action under the circumstances.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-501. Civil enforcement.

(1) (a) In addition to other remedies provided by law, an agency may seek enforcement of an order by seeking civil enforcement in the district courts.

(b) The action seeking civil enforcement of an agency's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

(c) Venue for an action seeking civil enforcement of an agency's order shall be determined by the requirements of the Utah Rules of Civil Procedure.

(d) The action may request, and the court may grant, any of the following:

- (i) declaratory relief;
- (ii) temporary or permanent injunctive relief;
- (iii) any other civil remedy provided by law; or
- (iv) any combination of the foregoing.

(2) (a) Any person whose interests are directly impaired or threatened by the failure of an agency to enforce an agency's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced:

(i) until at least 30 days after the plaintiff has given notice of the plaintiff's intent to seek civil enforcement of the alleged violation to the agency head, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(ii) if the agency has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or

(iii) if a petition for judicial review of the same order has been filed and is pending in court.

(b) The complaint seeking civil enforcement of an agency's order must name, as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement.

(c) Except to the extent expressly authorized by statute, a complaint seeking

civil enforcement of an agency's order may not request, and the court may not grant, any monetary payment apart from taxable costs.

(3) In a proceeding for civil enforcement of an agency's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:

(a) the order sought to be enforced was issued by an agency without jurisdiction to issue the order;

(b) the order does not apply to the defendant;

(c) the defendant has not violated the order; or

(d) the defendant violated the order but has subsequently complied.

(4) Decisions on complaints seeking civil enforcement of an agency's order are reviewable in the same manner as other civil cases.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-502. Emergency adjudicative proceedings.

(1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:

(a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) the threat requires immediate action by the agency.

(2) In issuing its emergency order, the agency shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

(c) give immediate notice to the persons who are required to comply with the order.

(3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-503. Declaratory orders.

(1) Any person may file a request for agency action, requesting that the agency issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(2) Each agency shall issue rules that:

(a) provide for the form, contents, and filing of petitions for declaratory orders;

(b) provide for the disposition of the petitions;

(c) define the classes of circumstances in which the agency will not issue a declaratory order;

(d) are consistent with the public interest and with the general policy of this

chapter; and

(e) facilitate and encourage agency issuance of reliable advice.

(3) (a) An agency may not issue a declaratory order if:

(i) the request is one of a class of circumstances that the agency has by rule defined as being exempt from declaratory orders; or

(ii) the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.

(b) An agency may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.

(4) Persons may intervene in declaratory proceedings if:

(a) they meet the requirements of Section 63G-4-207; and

(b) they file timely petitions for intervention according to agency rules.

(5) An agency may provide, by rule or order, that other provisions of Sections 63G-4-202 through 63G-4-302 apply to declaratory proceedings.

(6) (a) After receipt of a petition for a declaratory order, the agency may issue a written order:

(i) declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(ii) setting the matter for adjudicative proceedings;

(iii) agreeing to issue a declaratory order within a specified time; or

(iv) declining to issue a declaratory order and stating the reasons for its action.

(b) A declaratory order shall contain:

(i) the names of all parties to the proceeding on which it is based;

(ii) the particular facts on which it is based; and

(iii) the reasons for its conclusion.

(c) A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(d) A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(7) Unless the petitioner and the agency agree in writing to an extension, if an agency has not issued a declaratory order within 60 days after receipt of the petition for a declaratory order, the petition is denied.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-601. Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.

Renumbered and Amended by Chapter 382, 2008 General Session